BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF NEW ENGLAND FISH COMPANY, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	PCHB Nos. 630 and 631 FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

A formal hearing on appellant's consolidated appeals came on for hearing before Board members Walt Woodward, Chris Smith and W. A. Gissberg (presiding) in Lacey, Washington on October 7, 1974.

Appellant appeared by and through its attorney, Charles R. Blumenfeld; respondent appeared by and through Robert V. Jensen, Assistant Attorney General.

Having heard the evidence and considered the exhibits and being fully advised, the Board makes the following

EXHIBIT A

FINDINGS OF FACT

I.

In 1967, the State of Washington Pollution Control Commission (respondent's predecessor) issued its waste water discharge permits to two fish processing companies which were thereafter acquired by appellant. Such waste discharge permits expired in the fall of 1972 and each were conditioned, in part, as follows:

> "Sanitary sewage, waste process waters, and clean-up waters are to be discharged to the city sewer when one is available."

Since the expiration dates of those permits, they have been reissued to appellant from year to year thereafter until June 7, 1974. At that time respondent issued National Pollutant Discharge Elimination System (NPDES) Permits WA 000207-1 and WA 000217-8 to appellant pursuant to respondent's authority under the Federal Water Pollution Control Act of 1972 and the Washington Water Quality Act. The permits are identical and set down the conditions under which appellant can discharge sanitary sewage and process water from its facilities at Piers 65 and 66 into Elliott Bay. The permits conditionally authorize appellant to discharge process water to Elliott Bay until March 1, 1975 and to discharge sanitary sewage until June 15, 1974, at which time the sewage is to be discharged into a sanitary sewer.

II.

Appellant appealed Condition S.3.a. of the permits which required it, interalia, to hook-up to, and discharge sanitary sewage into, a sanitary sewer by June 15, 1974.

III.

Appellant does not own either Pier 65 or Pier 66. Both facilities are leased by appellant from the Port of Seattle, Pier 65 on a lease which expires on July 31, 1976 and Pier 66 on a month-to-month basis. Appellant intends to abandon its Pier 66 operation therein and combine it with its present Pier 65 operation either on Pier 65 (which the Port has made available to appellant for purchase) or at another Seattle waterfront Elliott Bay pier owned and acquired by it about a year ago.

One estimate of the cost of hooking up to the sewer of Metro is approximately sixteen thousand dollars for Pier 66 and eighteen thousand dollars for Pier 65. Appellant sustained a financial loss in its total world-wide operations for the last quarter of its most recent fiscal year.

IV.

Appellant's present plans, i.e., whether to move, or not move, from Pier 65 are not certain at this time, but, in any event, its use of the present facilities for its fish and crab processing facilities will continue for at least one year from the date of this hearing.

In 1970, a Metro trunk interceptor sewer facility was constructed across the street from appellant's fish processing facilities at Piers 65 and 66 and thereafter a ULID was formed and construction of laterals therefrom was completed in February, 1974. A sewer is now and has been available for hook-up of appellant's sanitary sewage since February, 1974.

The coliform count, in 1969, of Elliott Bay exceeded respondent's water quality standards, but since then the amount of sewage discharged into the Bay has been reduced. No evidence was presented as to the present coliform count. Several other fish processing plants located in

Elliott Bay have either complied with respondent's sanitary sewer permit requirement or have moved their facilities away from Elliott Bay or have gone out of business. Before the issuance of the permits which are the subject matter of this appeal, respondent had proposed permits which prohibited the discharge of "process water", but, that condition was eliminated by respondent after discussion between the parties revealed the temporary duration of appellant's occupancy of the two piers in which it then and now does business.

V.

The number of appellant's employees who now produce sewage waste varies on Pier 65 from a low of 15 to a high of 70 and on Pier 66 from a low of 30 to a high of 50, dependent upon market conditions.

VI.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant contends that Condition S.3 of the permit is neither reasonable nor practicable in view of the fact that appellant is not possessed of permanent plans as to the location of its combined fish processing facility and that the cost of making the sewer connection "far outweighs the few months effluent reduction benefits." We find that the Condition of the permits which requires the hook-up to the available sanitary sewer (and hence a prohibition of the dumping of human

waste into the waters of Elliott Bay) to be a reasonable method to prevent and control the pollution of the waters of the State of Washington and the best practicable available.

II.

Condition S.3 of the permit is not a new one which has suddenly been imposed by respondent upon appellant. It has known of such a requirement since at least the time that it acquired the facility at Pier 66 from Odion Sea Products Company and at Pier 65 from Whiz-Eardley Fisheries Company. The only reason for appellant's complaint is that it has not been able to internally make a timely decision concerning the permanent location of its combined facilities. The state cannot be expected to delay its program of cleaning up the waters of the State of Washington while industry determines what its long range plans are going to be, particularly where the respondent has made its requirements well known sufficiently in advance for industry to have complied therewith.

III.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The terms and conditions of the NPDES permits are affirmed.

DATED this 16th day of October, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward

WALT WOODWARD, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

Chris Smith

CHRIS SMITH, Member